

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON**

**JAMES B. SCOTT,**

Plaintiff,

vs.

**YAKIMA COUNTY SHERIFF'S  
OFFICE, DEPUTY SHERIFF M.  
STEADMAN, and YAKIMA  
COUNTY,**

Defendants.

**NO. CV-11-3069-RMP**

**ORDER GRANTING IN PART  
AND DENYING IN PART  
MOTION FOR PROTECTIVE  
ORDER; PROTECTIVE  
ORDER**

Before the Court is Defendant's motion, ECF No. 16, for the Court to enter a protective order to which all parties have stipulated. The parties have agreed to a procedure for review of purportedly confidential discovery in this case. The Court has reviewed the motion, the relevant filings, and is fully informed.

In light of the law regarding the sealing of court filings, the Court modifies paragraph nine of the parties' stipulated protective order to clarify the Court's understanding of the requirements of existing law in this Circuit and to

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3 ensure compliance with that law as this matter proceeds. Accordingly, the  
4 Defendants' Motion for Entry of the Parties' Stipulated Protective Order  
5 Regarding Release of Confidential Information, **ECF No. 16**, is **GRANTED**  
6 **IN PART AND DENIED IN PART**, and the following Protective Order is  
7 entered by the Court:  
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### 10 **PROTECTIVE ORDER**

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12 1. The documents or other materials covered by this Stipulated  
13 Protective Order (hereinafter "Confidential Materials") are those documents or  
14 other materials produced by any party and designated "Confidential" by that  
15 party in accordance with this Stipulated Protective Order. The party  
16 designating documents or other material "Confidential" shall designate at the  
17 bottom of each document or other item as [Name of Party or designation of  
18 Party (Plaintiff or Defendant)] **CONFIDENTIAL** page #XXXX  
19 **CONFIDENTIAL**.  
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23 2. Confidential Materials and any information contained therein may  
24 not be disseminated at any time, including after this case is concluded, except  
25 in accordance with this Stipulated Protective Order. Confidential Materials  
26 and any confidential information contained therein may be used only in  
27 connection with, and for purposes of, the above-entitled litigation, and not for  
28 any other purpose including, but not limited to, use in any other litigation.  
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3       3.     Within twenty-one (21) days after receiving documents or other  
4 materials designated Confidential by a producing party, a party may challenge  
5 the designation by serving written objection upon the designating party. Any  
6 such challenged documents or materials shall not be covered by this Stipulated  
7 Protective Order, unless the designating party establishes his, her, or its right to  
8 protection by order of the court upon motion of the designating party, with  
9 notice as with other non-dispositive motions under the court rules. Such  
10 motion shall be served and filed within twenty-one (21) days after receiving  
11 such objection, and if not so served and filed there shall be no obligation to  
12 keep the documents or materials confidential pursuant to this order. The  
13 documents or other materials shall be kept confidential pending a decision by  
14 the court in the event such a motion is served and filed within twenty-one (21)  
15 days. The party asserting confidentiality shall bear the burden of proof that its  
16 designation of confidentiality is proper.  
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22       4.     Access to the Confidential Materials and any of the information  
23 contained therein shall be restricted to named adult parties to this proceeding,  
24 authorized representatives of a corporate party, and the attorneys of record for  
25 said parties, and any paralegal, clerical, or secretarial personnel employed by  
26 the attorneys of record in this action.  
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3 5. No copies of Confidential Materials shall be made by any party  
4 except any copies which will be submitted to the Court for motions or trial, any  
5 copies which are used as exhibits in depositions, and any additional copies  
6 deemed necessary for provision to experts or consultants, or any party's  
7 insurance carrier(s). Counsel may scan or copy Confidential Materials for use  
8 within their respective offices.  
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11 6. Individuals with access to Confidential Materials and any of the  
12 information contained therein may provide copies of Confidential Materials to  
13 experts or consultants or any party's insurance carrier(s), but only after such  
14 experts or consultants or insurance representatives have agreed in writing to  
15 comply with the terms of this Stipulated Protective Order. Such agreement  
16 may be evidenced by a writing by the attorney of record that such attorney has  
17 provided the expert or consultant or insurance representative with a copy of the  
18 Stipulated Protective Order and he or she has orally agreed to comply with the  
19 terms of the Stipulated Protective Order.  
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22 7. Counsel may inquire regarding Confidential Materials during  
23 depositions and introduce Confidential Materials as exhibits, but only after  
24 stating on the record that s/he intends to so inquire or that s/he intends to  
25 introduce such an exhibit. If a transcript of the deposition is ordered, the  
26 parties may designate pages of the transcript as "Confidential" in accordance  
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3 with paragraph 1 of this stipulation within twenty-one (21) days after receiving  
4 a copy of the transcript. The transcripts shall not be disclosed during the 21-  
5 day time frame for designating any portion of the transcript as "Confidential,"  
6 without advance notice to and permission from all parties. Deposition exhibits  
7 containing Confidential Materials as designated herein shall remain  
8 confidential as provided herein.  
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11 8. Nothing in this order shall preclude a party from showing or  
12 disclosing to another person deposition transcripts, pleadings or briefs  
13 containing Confidential Material if the document containing such materials has  
14 been masked or redacted so that no disclosure of Confidential Material or any  
15 of the information contained therein occurs.  
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18 9. If and only if a party seeks to use Confidential Material in a  
19 pleading, the document(s) designated Confidential according to this Stipulated  
20 Protective Order and those portions of any pleading that refer directly or  
21 indirectly such Confidential Material shall be filed separately under seal when  
22 the pleading is filed. Any document(s) filed under seal pursuant to this  
23 paragraph must be accompanied by a motion to seal the document(s). Should  
24 the Court deny the motion to seal, any party shall have the opportunity to move  
25 to strike the document from the record. Documents filed as sealed by a party  
26 cannot remain sealed without further order of the Court because there is a  
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3 strong presumption in favor of public access to court documents. *See*  
4 *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir.  
5 2006). Accordingly, a party seeking to seal a judicial record must so move the  
6 Court and bears the burden of overcoming the presumption. *Kamakana*, 447  
7 F.3d at 1178. In the case of documents filed in support of a dispositive motion,  
8 the “compelling reasons” standard applies, and “[t]he party must “articulate [ ]  
9 compelling reasons supported by specific factual findings . . . that outweigh the  
10 general history of access and the public policies favoring disclosure, such as  
11 the public interest in understanding the judicial process.” *Kamakana*, 447 F.3d  
12 at 1178–79 (internal quotations omitted). With regard to non-dispositive  
13 motions, “a particularized showing under the good cause standard of Rule  
14 26(c) will suffice to warrant preserving the secrecy of sealed discovery  
15 material.” *Kamakana*, 447 F.3d at 1180 (internal citations and quotations  
16 omitted).

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18 10. Upon termination of this lawsuit by final judgment or dismissal,  
19 the copies of Confidential Materials provided by any party and all additional  
20 copies furnished to experts or consultants or others shall be returned to counsel  
21 for the producing party or destroyed, however counsel for each party may  
22 retain one copy which shall be kept confidential according this Stipulated  
23 Protective Order.  
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3 Modification of this Stipulated Protective Order may be made by further  
4 order of the Court upon stipulation of the parties, or upon motion of any party  
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6 for good cause shown.

7 The District Court Executive is directed to enter this Order and provide  
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9 copies to counsel.

10 **DATED** this 9th day of March 2012.

11 *s/ Rosanna Malouf Peterson*

12 ROSANNA MALOUF PETERSON  
13 Chief United States District Court Judge  
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